

Plaintiff, the HipSaver Company, Inc. (“HipSaver”) respectfully submits this motion to strike portions of the rebuttal report of Defendant J.T. Posey, Inc.’s (“Posey”) experts Mr. Hoffman and Mr. Green identified in the accompanying memorandum because the statements address matters not properly set forth in a damages expert’s opinion. The statements impermissibly offer conclusions of law. Further, the subject matter of these conclusions do not constitute proper matters upon which Messrs. Hoffman and Green is qualified to provide expert opinion. Such testimony is impermissible, will not assist the trier of fact and instead, may prejudice the jury. Accordingly, for the reasons discussed in the accompanying memorandum, the selected portions of Mr. Hoffman's report should be stricken.

CERTIFICATE PURSUANT TO CIVIL LOCAL RULE 7.1 and 37.1

I hereby certify that on October 23, 2006, counsel for the parties conferred by telephone but were unable to resolve the issues identified in this Motion.

THE HIPSAVER COMPANY, INC.
By its Attorneys,

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Dated: October 25, 2006

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Courtney M. Quish

October 25, 2006

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